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Attorneys for Defendant iovation Inc.

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

KOUNT, INC., a Delaware corporation,
Plaintiff,

v.

IOVATION INC., a Delaware corporation,
Defendant.

Case No. CV-09-00255-HA

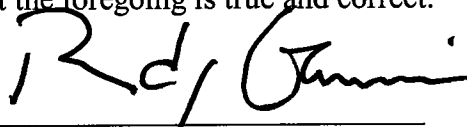
**SECOND DECLARATION OF RANDY
GAINER**

Randy Gainer declares:

1. I am one of the attorneys for iovation, Inc. ("iovation") in this case. I make this statement from personal knowledge and from the records of Davis Wright Tremaine, LLP in this case.
2. Attached and incorporated by reference in this declaration as Exhibit A is a true copy of Kount, Inc.'s Second Set of Requests for Production of Documents to iovation. A copy of Exhibit A was received by email by the attorneys for iovation on July 2, 2009.

3. Attached and incorporated by reference in this declaration as Exhibit B is a true copy of Kount's First Set of Interrogatories to iovation. A copy of Exhibit B was received by email by the attorneys for iovation on July 2, 2009.
4. iovation's attorneys provided copies of all of iovation's current and past contracts with its merchant customers to Kount's attorneys on July 2, 2009. The financial information in the contracts and the identities of the customers were redacted. The contracts were marked "Attorneys Only" pursuant to the Stipulated Protective Order entered in this action.
5. In late June and again on July 1, I advised Kount's attorneys that iovation's Chief Financial Officer, Doug Shafer, is available to be deposed at a mutually convenient time.

I declare under the penalties of perjury that the foregoing is true and correct.



Randy Gainer

Executed at Seattle, Washington on July 5, 2009.

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Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

KOUNT INC., a Delaware corporation,

Case No. 3:09-cv-255

Plaintiff,

v.

IOVATION INC., a Delaware corporation,

**PLAINTIFF KOUNT INC.'S SECOND SET
OF REQUESTS FOR PRODUCTION OF
DOCUMENTS TO DEFENDANT
IOVATION INC.**

Defendant.

Pursuant to Federal Rule of Civil Procedure 34 and Local Rule 34, plaintiff Kount Inc. ("Kount") submits the following Second Set of Requests for Production of Documents to defendant iovation Inc. ("iovation"). Responses to these requests must be returned to M. Christie

Page 1 - Plaintiff Kount Inc.'s Second Set of Requests for Production of Documents to Defendant iovation Inc.

Helmer of Miller Nash LLP, 3400 U.S. Bancorp Tower, 111 S.W. Fifth Avenue, Portland, Oregon, 97204-3699, within 30 days of the date hereof.

DEFINITIONS

1. The terms “you,” “your,” “iovation,” or “Defendant” refer to defendant iovation Inc., all subsidiaries and affiliates thereof; all divisions, predecessors, successors and assigns of each of the foregoing; and all officers, directors, employees, agents, consultants, attorneys and all other persons acting or purporting to act on behalf, or under the control, of each of the foregoing.

2. “Referring to” means recording, summarizing, digesting, referring to, commenting upon, describing, reporting, listing, analyzing, studying or otherwise discussing in any way the subject matter identified in request.

3. “Relating to” means having any legal, logical or actual relationship of any kind to the subject matter identified in the request.

4. “Document,” in the singular and plural, means any written, printed, or recorded matter of any kind which is in your possession, custody or control, or known to you, wherever located, or to which you have access. This definition includes any recorded form of communication or representation and any source of data from which information can be translated or obtained. This definition also incorporates the designated documents or electronically stored information described in Federal Rule of Civil Procedure 34(a)(1)(A).

5. The term “person” as used herein shall mean any natural person or business organization.

6. With respect to computers, the term “identify” shall mean to state the owner and location of the computer, who is in possession of the computer, and whether the computer is leased or owned by the person in possession.

7. The term “software” shall mean source code, compiled source code, object code, machine code, or any other code that is used to instruct a computer.

8. The term “Kount” refers to plaintiff Kount Inc.

9. As used herein, “and” and “or” shall be construed conjunctively and disjunctively so as to acquire the broadest meaning possible.

10. As used herein, the “‘871 Patent” shall mean United States Patent No. US 7,330,871 B2, which issued on February 12, 2008, entitled “ONLINE MACHINE DATA COLLECTION AND ARCHIVING PROCESS.”

11. As used herein, “communication” and “communications” shall mean any transmission of information by one or more persons and/or between two or more persons by any means including, without limitation, telephone conversations, letters, telegrams, teletypes, telexes, telecopies, computer linkups, written memoranda, and face-to-face conversations.

12. As used herein, “transfer” or “transferred” shall mean any transfer of ownership, possession, use, or control by sale, lease, lending, or other means.

INSTRUCTIONS

These Requests shall be deemed to relate to any and all relevant documents and things within your possession, custody or control, including, without limitation, documents and things located in the personal files of any and all past and present directors, officers, agents, representatives, employees, attorneys, and accountants of or retained by you.

Documents from any single file shall be produced in the same order as they were found in such file, and the files from which they are being produced shall be identified. If copies

of documents are produced in lieu of the originals, such copies should be legible and bound or stapled in the same manner as the original.

If the production of any documents or things responsive to these Requests is objected to on the ground of privilege or work product, or for any other reason, with respect to each such document or thing state: (1) the identity of its author(s) or creator(s); (2) the identity of its recipient(s); (3) its subject matter; (4) the identity of the person(s) to whom the document or thing or any portion thereof has already been revealed; (5) the source of the document; (6) the date of the document; and (7) the basis upon which it is being withheld.

These Requests for Production of Documents shall be deemed continuing, and supplemental responses should be provided as additional information becomes available, in accordance with the provisions contained in Rule 26(e) of the Federal Rules of Civil Procedure.

If any document that would have been responsive has been destroyed or is otherwise no longer in your possession, custody or control: (1) describe the content of the document, and state the location of all copies of it; and (2) state the date of, and identify the person responsible for, its destruction, loss, transfer, or other action by which the document left your possession, custody, or control.

The singular and masculine form of a noun or pronoun shall embrace, and shall be read and applied as, the plural or the feminine or neuter, as the particular context makes appropriate.

REQUESTS FOR PRODUCTION

Request No. 1: Documents sufficient to identify the computers on which all or part of iovation software relating to the reputation of computers that connect to a network resides, including but not limited to iovation software relating to ReputationManager, ReputationShield™ and Device Reputation Repository.

Request No. 2: Documents sufficient to show what iovation software resides on each of the computers identified in the documents responsive to Request No.1.

Request No. 3: Documents, including any available schemas, sufficient to show the data fields captured for each record in your Device Reputation Authority database or any similar database and the relationship between the tables in such database(s).

Request No. 4: A representative sample of records (at least 1,000) from your Device Reputation Authority database or any similar database.

Request No. 5: A complete, single copy in electronic form of your source code (including programmer comments) relating to the reputation of computers that connect to a network, including complete, single copies of the source code used in connection with device identification, device reputation, device risk, ReputationManager, Device Reputation Authority (DRA), ReputationShield™, and iovation Reputation Services.

Request No. 6: A complete, single copy of your source code in hard copy form (including programmer comments) relating to the reputation of computers that connect to a network, including complete, single copies of the source code used in connection with device identification, device reputation, device risk, ReputationManager, Device Reputation Authority (DRA), ReputationShield™, and iovation Reputation Services.

Request No. 7: All contracts between you and your customers with respect to computer services and software relating to the reputation of computers that connect to a network, including device identification, device reputation, device risk, ReputationManager, Device Reputation Authority (DRA), ReputationShield™, and iovation Reputation Services. For purposes of this request, pricing information may be redacted from such contracts.

Request No. 8: All instruction manuals or similar materials provided to customers in connection with ReputationManager, Device Reputation Authority (DRA), ReputationShield™, and iovation Reputation Services.

DATED this 2nd day of July, 2009.

MILLER NASH LLP



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Fax: (503) 224-0155

Attorneys for Plaintiff Kount Inc.


I hereby certify that I served the foregoing plaintiff Kount Inc.'s second set of requests for production of documents to defendant iovation Inc. on:

Mr. William A. Birdwell
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Mr. Randy Gainer
E-mail: randygainer@dwt.com
Mr. Scott E. Warnick
E-mail: scottwarnick@dwt.com
Mr. Alan Galloway
E-mail: alangalloway@dwt.com
Davis Wright Tremaine LLP
Suite 2300, 1300 S.W. Fifth Avenue
Portland, Oregon 97201-5630
Fax: (503) 778-5299
Attorneys for Defendant

by the following indicated method or methods on the date set forth below:

- ☐ **CM/ECF system transmission.**
- ☒ **E-mail.** As required by Local Rule 5.2, any interrogatories, requests for production, or requests for admission were e-mailed in Word or WordPerfect format, not in PDF, unless otherwise agreed to by the parties.
- ☐ **Facsimile communication device.**
- ☐ **First-class mail, postage prepaid.**
- ☐ **Hand-delivery.**
- ☐ **Overnight courier, delivery prepaid.**

DATED this 2nd day of July, 2009.



M. Christie Helmer, OSB No. 743400
Of Attorneys for Plaintiff

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Elisa J. Dozono, OSB No. 063150
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Telephone: (801) 521-5800
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Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

KOUNT INC., a Delaware corporation,

Case No. 3:09-cv-255

Plaintiff,

**PLAINTIFF KOUNT INC.'S FIRST SET OF
INTERROGATORIES TO DEFENDANT
IOVATION INC.**

v.

IOVATION INC., a Delaware corporation,

Defendant.

Pursuant to Federal Rule of Civil Procedure 33 and Local Rule 33, plaintiff Kount Inc. ("Kount") submits the following First Set of Interrogatories to defendant iovation Inc.

("iovation"). Answers to these interrogatories must be returned to M. Christie Helmer of Miller

Page 1 - Plaintiff Kount Inc.'s First Set of Interrogatories to Defendant iovation Inc.

Nash LLP, 3400 U.S. Bancorp Tower, 111 S.W. Fifth Avenue, Portland, Oregon, 97204-3699, within 30 days of the date hereof.

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1. The terms “you,” “your,” “iovation,” or “Defendant” refer to defendant iovation Inc., all subsidiaries and affiliates thereof; all divisions, predecessors, successors and assigns of each of the foregoing; and all officers, directors, employees, agents, consultants, attorneys and all other persons acting or purporting to act on behalf, or under the control, of each of the foregoing.

2. “Referring to” means recording, summarizing, digesting, referring to, commenting upon, describing, reporting, listing, analyzing, studying or otherwise discussing in any way the subject matter identified in request.

3. “Relating to” means having any legal, logical or actual relationship of any kind to the subject matter identified in the request.

4. “Document,” in the singular and plural, means any written, printed, or recorded matter of any kind which is in your possession, custody or control, or known to you, wherever located, or to which you have access. This definition includes any recorded form of communication or representation and any source of data from which information can be translated or obtained. This definition also incorporates the designated documents or electronically stored information described in Federal Rule of Civil Procedure 34(a)(1)(A).

5. The term “person” as used herein shall mean any natural person or business organization.

6. With respect to computers, the term “identify” shall mean to state the owner and location of the computer, who is in possession of the computer, and whether the computer is leased or owned by the person in possession.

7. With respect to a person, the term “identify” shall mean to state the individual’s or entity’s name, address, and telephone number.

8. The term “software” shall mean source code, compiled source code, object code, machine code, or any other code that is used to instruct a computer.

9. The term “Kount” refers to plaintiff Kount Inc.

10. As used herein, “and” and “or” shall be construed conjunctively and disjunctively so as to acquire the broadest meaning possible.

INTERROGATORIES

Interrogatory No. 1: Identify all computers on which all or part of iovation software relating to the reputation of computers that connect to a network resides, including but not limited to source code relating to ReputationManager, ReputationShield™ and Device Reputation Repository.

Interrogatory No. 2: Describe what portions of iovation software reside on each of the computers identified in response to Interrogatory No. 1.

Interrogatory No. 3: Describe the data fields captured for each record in your Device Reputation Authority database or any similar database and the relationship between the tables in such database(s).

Interrogatory No. 4: State the number of records currently stored in your Device Reputation Authority database or any similar database.

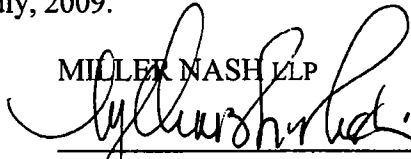
Interrogatory No. 5: Identify all of your customers for ReputationManager, ReputationShield™ and Device Reputation Repository.

Interrogatory No. 6: Identify each person likely to have discoverable information that you may use to support your claims or defenses, describing in detail the subject matter of the information.

Interrogatory No. 7: Identify the person within iovation who has the most knowledge regarding your source code relating to the reputation of computers that connect to a network resides, including but not limited to source code relating to ReputationManager, ReputationShield™ and Device Reputation Repository.

DATED this 2nd day of July, 2009.

MILLER NASH LLP



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Attorneys for Plaintiff Kount Inc.

I hereby certify that I served the foregoing plaintiff Kount Inc.'s first set of interrogatories to defendant iovation Inc. on:

Mr. William A. Birdwell
E-mail: billbirdwell@dwt.com
Mr. Randy Gainer
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Mr. Scott E. Warnick
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Mr. Alan Galloway
E-mail: alangalloway@dwt.com
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Attorneys for Defendant

by the following indicated method or methods on the date set forth below:

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- ☒ **E-mail.** As required by Local Rule 5.2, any interrogatories, requests for production, or requests for admission were e-mailed in Word or WordPerfect format, not in PDF, unless otherwise agreed to by the parties.
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- ☐ **Overnight courier, delivery prepaid.**

DATED this 2nd day of July, 2009.



M. Christie Helmer, OSB No. 743400
Of Attorneys for Plaintiff